IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 29/04/2004

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THE HONOURALE MR.JUSTICE M. CHOCKALINGAM

C.R.P.(NPD) NO.279 OF 2004
AND
C.M.P.NO.2326 OF 2004

1. D.R.Subramanian
Aruna Finance & Aruna Chits
Church Building,
Kamala Nehru Hospital Road
Dindigul
2. S.Aravindan
3. S.Sravanan .. Petitioners

-Vs-

1. V. Bangarusamy
2. V. Gopalakrishnan .. Respondents

This civil revision petition is preferred under Section 25 of the Tamil Nadu Buildings Lease and Rent Control Act, 1960 as amended by Act 23 of 1973 against the judgment and decree made in RCA No.4 of 1999 dated 28.11.2003 by the learned Principal Subordinate Judge, Dindigul reversing the judgment and decree made in RCOP No.17 of 1997 dated 2 2.12.1998 on the file of the learned Principal District Munsif, Dindigul.

!For Petitioners : Mr.M.S.Suresh Kumar

^For Respondents : Mr.V.Raghavachari

:ORDER

Aggrieved over the judgment of the learned Rent Control Appellate Authority, Dindigul granting an order of eviction in favour of the respondents/landlords by reversing the order of the learned Rent Controller, wherein the petition for eviction filed by the respondents was originally dismissed, the tenants have filed this civil revision petition.

2. The respondents/landlords filed a petition for eviction under Section 10(3)(a)(iii) and 14(1)(b) of the Tamilnadu Buildings (Lease and Rent Control) Act with the following averments:
The properties bearing Door nos.60 and 61, V.M.Street, Dindigul belonged to Krishnammal. The petitioners and their 2 brothers, Subramanian

and Lakshmanan are the sons of Krishnammal. She let the properties for rent. She died on 11.4.1994 and as per the Will executed by her, the petitioners became the owners of the building bearing Door No.61, V.M.Lane, Dindigul. The petitioners together were carrying on grocery business. The first respondent became a tenant of the mother of the petitioners and he paid Rs.1000/- as advance. He entered into a fresh tenancy agreement on 1.6.1993 for three years with the second petitioner, who was the power of attorney of his mother. The first respondent has been paying a monthly rent of Rs.400/- and getting receipt from the second petitioner. The petitioners had no non-residential building at Dindigul, except the one that has been let to the first respondent. The first petitioner has intended to come back to Dindigul and to carry on business, which he is carrying on at Coimbatore. The petitioners states that as per the rental agreement, the period of lease expired on 31.5.1996 and the lease has not been extended. The building is about 60 years old and the petitioner intends to demolish the property and reconstruct a new building as and when they got the possession of the same. The petitioner sent a notice to the first respondent on 28.1.1997 requesting him to vacate the property, but on 2.2.1997, the first respondent sent a reply stating that the claim of the petitioners is not a bona fine one, and hence he filed the petition for eviction.

3. The petitioners herein resisted the petition for eviction by stating that the petition was filed before the lease agreement was over; that it is not true that the petitioners are intending to demolish and reconstruct the building; that the petitioners have no means to reconstruct the building and the claim of the petitioners is not a bona fide one, and hence, the petition was to be dismissed.

4. The learned Rent Controller, Dindigul, who conducted an enquiry on the petition, has negatived the request holding that the petitioners have not proved their case. Aggrieved, the landlords took it before the learned Rent Control Appellate Authority, Dindigul in RCA No.4 of 1999, which on enquiry ended in favour of the landlords by an order of eviction. Thus, this revision has arisen at the instance of the tenants.

5. Heard the learned counsel for the revision petitioners/tenants and on those contentions, the learned counsel appearing for the respondents/landlords.

6. The respondents/landlords sought an order of eviction of the revision petitioners/tenants on the ground that they are intending to carry on their business in the property, in question and apart from that they are going to demolish the existing property and reconstruct a new building. The same was resisted by the revision petitioners/ tenants stating that there was no need for the landlords to carry on the business in the property, in question, and apart from that the ground that they intended to demolish and reconstruct was not true, genuine and lacks bona fide. It is not in controversy that the first respondent in the RCOP became the tenant even prior to 1974 and was paying monthly rent of Rs.400/-. From 1.6.1993, the first respondent in the RCOP entered into an agreement with the second petitioner/landlord for a period of three years. The case of the petitioners/landlords before the Rent Controller was that the first petitioner, who was carrying on his business at

Coimbatore, has decided to come back to his place, namely, Dindigul and to do his business and the second petitioner/ landlord, who was carrying on his business in a rental premises, has to carry on his business in the property, in question, which belonged to the them.

7. From the evidence available, it was made clear that the second petitioner/landlord, who was one of the owners of the building, was carrying on his business in a building, which belonged to the Community. The fact that he is carrying on business is not disputed. While so, the contention of the revision petitioners that neither the owner had got any desire nor it would be false ground cannot be countenanced. There cannot be any legal impediment for the owner of the building, who is carrying on business in a rental premises, to seek for the relief of eviction of the tenants in his building on the ground that he has to carry on his business in his building. Apart from the above ground, the petitioners sought eviction on the ground of demolition and reconstruction. It is not in dispute that the building was 60 years of old. A plan was also placed before the Municipality and it has also been approved and they got the permission extended, which were quite evident under Exs.P.9 and P.10.

8. It is a well settled position of law that for the purpose of demolition and reconstruction of the building, it is not necessary that the building should be in the old and dilapidated condition. But, in the instant case, it was made clear that the building was 60 years of old and it requires reconstruction. Apart from that it is for the landlords to decide what would be the better use of the building by demolition or reconstruction of the same. There is no evidence available to show that the landlords have got any other building except the one, in question. Under the stated circumstances, the question of lack of bona fide as contended by the revision petitioners' side cannot be countenanced. Without proper appreciation of the ground and marshalling the evidence available, the Rent Controller has dismissed the petition. The learned Rent Control Appellate Authority, on proper appreciation of evidence, has found that both the grounds for eviction have been proved, and hence, the respondents/landlords were entitled to an order of eviction and has granted so. The learned counsel for the revision petitioners/tenants much emphasised the ground of lack of bona fide. This court is unable to agree with him and the learned Rent Control Appellate Authority was perfectly correct in giving a finding that the ground what was brought before him was a bona fide one. This Court is unable to notice any reason why the said order based on reason has to be interfered with.

9. The learned counsel for the revision petitioners brought to the notice of the Court that the revision petitioners/tenants have been in occupation as tenants for a long time and they have lent lots of money to third parties. Hence, for the purpose of recovery of the same, they should be granted not less than three years time to vacate the building, if the Court comes to a conclusion to sustain the order of the appellate Authority. The learned counse l for the respondents would submit that the grant of three years would be a too longer period. The eviction petition was filed by the respondents/landlords in the year 1997 and has been pending for nearly seven years. Taking into consideration the facts and circumstances, the revision petitioners/ tenants are granted time for a period of 18 months, within which period the revision petitioners/tenants have to vacate and hand over the premises to the respondents/landlords. It is brought to the notice of the

Court by the learned counsel for the revision petitioners that there were no arrears of rent till date. The revision petitioners/tenants are directed to pay the rent within 7th of every succeeding calendar month. If any default during the period of 18 months, the respondents/landlords are entitled to seek for eviction immediately. The revision petitioners are directed to file an affidavit undertaking to vacate and hand over the premises within the period referred to above on or before 20.6.2004.

10. In the result, this civil revision petition is dismissed. No costs. Consequently, connected CMP is also dismissed.

Index : Yes
Internet : Yes

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To

1. The Principal Subordinate Judge, Dindigul
2. The Principal District Munsif, Dindigul